

DEPARTMENT OF INSURANCE, SECURITIES AND BANKING

NOTICE OF FINAL RULEMAKING

The Commissioner of the Department of Insurance, Securities, and Banking, pursuant to the authority set forth in section 705 of the Securities Act of 2000, effective October 26, 2000 (D.C. Law 13-203; D.C. Official Code § 31-5607.05 (2001)), and section 125 of the Insurance Trade and Economic Development Amendment Act of 2000, effective April 3, 2001 (D.C. Law 13-265; D.C. Official Code § 31-2231.25 (2001)), hereby gives notice of the adoption of a new chapter 58 of Title 26A and a new section 169 of chapter 1 of Title 26B, of the District of Columbia Municipal Regulations. The new chapter 58 of Title 26A and the new section 169 of chapter 1 of Title 26B set forth certain guidelines and prohibitions regarding the use of senior-specific certifications, designations, and credentials by insurance producers, investment advisers and investment adviser representatives. The Commissioner has determined that this rulemaking is in the public interest, appropriate for the protection of investors, and consistent with the purposes intended by the applicable statutory provisions.

A notice of the proposed rules was published in the *D.C. Register* on May 21, 2010 (57 DCR 4449). No substantive changes have been made. These rules shall become effective on the date of publication of this notice in the *D.C. Register*.

Title 26A (Insurance) and Title 26B (Securities) of the District of Columbia Municipal Regulations are amended as follows:

A. Title 26A is amended by adding a new chapter 58 to read as follows:

CHAPTER 58: SENIOR-SPECIFIC CERTIFICATIONS, DESIGNATIONS AND CREDENTIALS**5800 APPLICABILITY**

5800.1 This chapter shall apply to any solicitation, sale, or purchase of, or advice made in connection with, a life insurance or annuity product by an insurance producer.

5801 PROHIBITED USE OF SENIOR-SPECIFIC CERTIFICATIONS AND PROFESSIONAL DESIGNATIONS

5801.1 The use, directly or indirectly, through publications or writings, or by issuing or promulgating analyses or reports, of a senior-specific certification or professional designation by any person in connection

with the solicitation, sale, or purchase of life insurance or annuity products; or in providing advice as to the value or advisability of purchasing or selling life insurance or annuity products that indicates or implies that the insurance producer has special certification or training in advising or servicing seniors or retirees, in such a way as to mislead, constitutes an unfair and deceptive act or practice in the business of insurance within the meaning of the Insurance Trade and Economic Development Amendment Act of 2000, effective April 3, 2001 (D.C. Law 13-265; D.C. Official Code § 31-2231.01 (2001)).

5801.2

The uses prohibited by subsection 5801.1 include, but are not limited to, the following:

- (a) Use of a certification or professional designation by an insurance producer who has not actually earned the certification or professional designation or is otherwise ineligible to use the certification or designation;
- (b) Use of a nonexistent or self-conferred certification or professional designation;
- (c) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the insurance producer using the certification or designation does not have; and
- (d) Use of a certification or professional designation that was obtained from a certifying or designating organization that:
 - (1) Is primarily engaged in the business of instruction in sales or marketing;
 - (2) Does not have reasonable standards or procedures for assuring the competency of its certificants or designees;
 - (3) Does not have reasonable standards or procedures for monitoring and disciplining its certificants or designees for improper or unethical conduct; or
 - (4) Does not have reasonable continuing education requirements for its certificants or designees in order to maintain the certificate or designation.

5801.3

There is a rebuttable presumption that a certifying or designating organization is not disqualified solely based on subsection 5801.2(d) when the certification or designation issued by the organization:

- (a) Does not primarily apply to sales or marketing; and
- (b) When the organization or the certification or designation in question has been accredited by:
 - (1) The American National Standards Institute;
 - (2) The National Commission for Certifying Agencies;
 - (3) Any organization that is on the U.S. Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes;" or
 - (4) Any other nationally-recognized accreditation organization designated by the Commissioner.

5801.4 In determining whether a combination of words or an acronym standing for a combination of words constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing seniors or retirees, factors to be considered shall include:

- (a) Use of one or more words such as "senior," "retirement," "elder," or like words combined with one or more words such as "certified," "registered," "chartered," "advisor," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and
- (b) The manner in which those words are combined.

5801.5 For the purposes of this chapter, a certification or professional designation does not include a job title within an organization that is licensed or registered by a State or federal financial services regulatory agency, unless it is used in a manner that would confuse or mislead a reasonable consumer, if the job title:

- (a) Indicates seniority or standing within the organization; or
- (b) Specifies an individual's area of specialization within the organization.

5899 DEFINITIONS

5899.1 For the purposes of this chapter, the following terms shall have the means ascribed:

“Financial services regulatory agency” - includes, but is not limited to, an agency that regulates insurers, insurance producers, broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

“Insurance producer” - a person required to be licensed under the laws of the District of Columbia to sell, solicit, or negotiate insurance, including annuities.

B. Title 26B, chapter 1, is amended by adding a new section 169 to read as follows:

**169 SENIOR-SPECIFIC CERTIFICATIONS, DESIGNATIONS,
AND CREDENTIALS**

169.1 The use, directly or indirectly, of a certification, professional designation, or credential by any person in connection with the offer, sale, or purchase of securities, or the providing of advice as to the value of or the advisability of investing in, purchasing, or selling securities that indicates or implies that the user has special certification or training in advising or servicing seniors or retirees, in such a way as to mislead, constitutes an unethical and dishonest practice pursuant to section 207(a)(9) of the Securities Act of 2000, effective October 26, 2000 (D.C. Law 13-203; D.C. Official Code § 31-5602.07(a)(9) (2001)).

169.2 The uses prohibited by subsection 169.1 include, but are not limited to, the following:

- (a) Use of a certification, professional designation, or credential by a person who has not actually earned the certification, professional designation, or credential or is otherwise ineligible to use the certification, professional designation, or credential;
- (b) Use of a nonexistent or self-conferred certification, professional designation, or credential;
- (c) Use of a certification, professional designation, or credential, that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification, professional designation, or credential does not have; or
- (d) Use of a certification, professional designation, or credential obtained from an organization that:

- (1) Is primarily engaged in the business of instruction in sales or marketing; or
- (2) Does not have reasonable standards and procedures for assuring the competence of those persons to whom it provides certifications, designations, or credentials.

169.3 There is a rebuttable presumption that a designating, certifying, or credentialing organization is not disqualified solely based on subsection 169.2(d) if:

- (a) The certification, designation, or credential does not primarily apply to sales or marketing; and
- (b) The organization has been accredited by:
 - (1) The American National Standards Institute;
 - (2) The National Commission for Certifying Agencies;
 - (3) An organization that is on the U.S. Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes"; or
 - (4) Any other nationally-recognized accreditation organization designated by the Commissioner.

169.4 In determining whether a combination of words or an acronym constitutes a certification, professional designation, or credential indicating or implying that a person has special certification or training in advising or servicing seniors or retirees, factors to be considered shall include:

- (a) The use of words such as "senior" and "retirement" combined with words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," or "planner" in the title of the certification, professional designation, or credential; and
- (b) The context or manner in which those words are used together.

169.5 For the purposes of this section, a certification, professional designation, or credential does not include a job title within a financial services organization that is licensed or registered by a state or federal regulatory agency, unless it is used in a manner that would confuse or mislead a reasonable consumer, if that job title:

- (a) Indicates seniority or standing within the organization: or
- (b) Specifies an individual area of specialization within the organization.

169.6 Nothing in this rule shall limit the Commissioner's authority to enforce the provisions of the Securities Act of 2000, D.C. Official Code § 31-5601.01 *et seq.* ("Securities Act of 2000"), and the implementing regulations of the Securities Act of 2000.